

**AUG 25 2006**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GORGONIO FERNANDEZ-GAMEZ,

Defendant-Appellant.

No. 05-30539

D.C. No. CR-04-00046-WFN

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of Washington  
Wm. Fremming Nielsen, Senior Judge, Presiding

Submitted August 21, 2006 <sup>\*\*</sup>

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Gorgonio Fernandez-Gamez appeals his 51-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry,

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Fernandez-Gamez contends that the district court violated his constitutional rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed by *United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006).

We also reject Fernandez-Gamez's contention that the enhanced sentence was inappropriate because the government did not allege that the date of his deportation was subsequent to his prior conviction. *See United States v. Castillo-Rivera*, 244 F.3d 1020, 1024-25 (9th Cir. 2001); *see also United States v. Hernandez-Hernandez*, 431 F.3d 1212, 1216-17 (9th Cir. 2005) (rejecting a Sixth Amendment challenge where the indictment did not specify that the deportation was subsequent to the predicate conviction). In the plea agreement and at the plea colloquy, Fernandez-Gamez admitted that he was deported on January 8, 2002, which was subsequent to his February 7, 1995 drug conviction.

**AFFIRMED.**